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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,058	07/15/1999	JOHN CRESCENTI	044463.0014	4549
29858	7590	05/02/2006	EXAMINER	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP			COLBERT, ELLA	
900 THIRD AVENUE			ART UNIT	
NEW YORK, NY 10022			PAPER NUMBER	
			3624	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/354,058

Applicant(s)

CRESCENTI ET AL.

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 15-17, 19-23, 25-27, 29, 30 and 7013 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 10, 20 and 27 is/are rejected.
- 7) ☒ Claim(s) 1-3, 7-9, 11-13, 15-17, 19, 21-23, 25, 26, 29 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Claims 1-4, 7-13, 15-17, 19-23, 25-27, 29, and 30 are pending in this communication filed 02/16/06 entered as Response After Non-Final Action (Response to Miscellaneous Communication).

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show Figure 4, element "310" as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The Specification is objected to because page 2 at the top of the page recites in the upper right hand corner "PATENT" and in the center of the page "IN THE UNITED STATES PATENT AND TRADEMARK OFFICE" (Attorney Docket No. 44463.0014) which needs to be deleted. Please see the following for the format for a Specification:

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).

- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The Specification under "CROSS REFERENCE TO RELATED APPLICATIONS" should contain the title of the related application, the file date, the application number, the status of the application (pending, patent number, or abandoned) and the names of the inventors.

The amended replacement paragraph at page 9, lines 6-13 recites in these lines "The network computing device 110 contains ... manager component 114. The manager component 114 ..., and ... to those parameters. The parameters ..., ... usage policies. Thus, through the operation of the manager component 114, ... backup cell 100". These lines would be better recited as "The network computing device 110 (1) contains ... manager component 114. The first manager component 114 ..., and ... to those parameters. The parameters ..., ... usage policies. Thus, through the operation of the first manager component 114, ... backup cell 100".

Replacement paragraph at page 9, lines 17-21 recites "The network device 160 contains ... backup cell 150. The manager component 164 ... to the manager component 114 in the backup cell 100. Thus, ... operation of the manager component 164, ... backup cell 160". These lines would be better recited as "The network computing device 160 (4) contains ... backup cell 150. The second manager component 164 ... to the first manager component 114 in the backup cell 100. Thus, ... operation of the second manager component 164, ... backup cell 160".

Replacement paragraph at page 10, line 21 to page 11, line 6 recites "... the remote manager component 164 could take place ... the network device 160 would like to administer ... the backup cell 100. Or splitting ... between the manager components 114 and 164 ..., thus ...". These lines would be better recited as "... the remote second manager component 164 could take place ... the network computing device 160 (4) would like to administer ... the backup cell 100. Or splitting ... between the first and second manager components 114 and 164 ..., thus ...".

Replacement paragraph at page 12, line 21 to page 13, line 3 recites "Fig. 2 is a functional block ... the backup cell. The backup cell 200 comprises the network computing devices 210, 220, and 230. The network computing device 210 runs ...". These lines would be better recited as "Fig. 2 is a functional block ... the backup cell. The backup cell 200 comprises the network computing devices 210 (1), 220 (2), and 230 (3). The network computing device 210 (1) runs ...".

Replacement paragraph at page 15, line 1-7 recites "The manager component 212 is able to ... on the network computing device 260. Additional indexed ..., and the manager components 212 or 262 ... manager components as well. The manager component 262 can ...". These lines would be better recited as "The first manager component 212 is able to ... on the network computing device 260 (4). Additional indexed ..., and the first or second manager components 212 or 262 ... manager components as well. The second manager component 262 can ...".

Replacement paragraph at page 16, lines 13-16 recites "... several virtual manager components 320, 330, and 340. Each of the virtual manager components

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320, 330, and 340 would ...". These lines would be better recited as "... several virtual manager components 320(3), 330(1), and 340 (2). Each of the virtual manager components 320 (3), 330 (1), and 340 (2) would ...".

Replacement paragraph at page 17, lines 9-12 recites "A remote network computing device 380 ... manager component 385. The manager component ... with the manager component 310. As such, the manager component 310 ... supervise the activities of the manager component 310, and the virtual manager components 320, 330, and 340." These lines would be better recited as "A remote network computing device 380 ... manager component 385. The second manager component ... with the first manager component 310. As such, the first manager component 310 ... supervise the activities of the first manager component 310, and the virtual manager components 320 (3), 330 (1), and 340 (2)."

Page 9, lines 3 and 4 recite "A backup cell 100 comprises a plurality of network devices 110, 120, and 130 that are to be backed up. The ...". These lines would be better recited as "A backup cell 100 comprises a plurality of network computing devices 110 (1) , 120 (2), and 130 (3) that are to be backed up. The ...". Line 15 recites "comprising a plurality of network devices 160, 170, and 180. These network devices are". This line would be better recited as "comprising a plurality of network computing devices 160 (4), 170 (5), and 180 (6). These network devices are".

Pages 10, lines 4, 6-8, 10-13, 17, 18, 21, and 22; page 11, lines 1, 8, 11, 14, 18, 19, and 22; and page 12, line 8; page 13, lines 1, 2, 4, and 17; page 14, lines 1, 3-5, 7, 10, 12, and 19; page 15, lines 1, 2, 4, 6, 9, 10, 14-17, 19, 21, and 22; page 16, lines 1,

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3, 4, 6, 13-15, 17-20, and 22; page 17, lines 1, 3-12, and 14-18; and page 18, lines 5-7.

These pages and lines have a problem with identifying the first and second manager components, the "network computing devices 110(1), 120 (2), 130 (3), 160 (4), 170 (5), and 182 (6)", the "network computing devices 210 (1), 220 (2), and 230 (3)", the "virtual manager components 320 (3), 330 (1), and 340 (2)", and "remote network computing device 380". These pages and reference numbers in the drawings are not in agreement with the Specification. For example, the drawing figure 1 labels element "114" as "first manager component" and the Specification references "manager component 114"; the drawing figure 2 labels element "164" as "Second manager component" and the Specification references element "164" as "manager component"; devices 1-6 in the drawings are labeled "network computing device 110 (1), network computing device 120 (2), etc. and the Specification references "computing devices 110, 120, 130, 160, 170, and 182". Page 12, lines 17-19 recites "... by reference to U.S. Patent Application 09/354,063, "MODULAR BACKUP AND RETRIEVAL SYSTEM", filed July 15, 1999." These lines should recite "... by reference to U.S. Patent Application 09/354,063, "MODULAR BACKUP AND RETRIEVAL SYSTEM", filed July 15, 1999, pending".

A substitute specification is required pursuant to 37 CFR 1.125(a) because there are numerous errors in the Specification.

A substitute specification must not contain new matter. The substitute specification must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject

matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) and a statement that the substitute specification contains no new matter must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown.

### ***Claim Objections***

4. Claim 1 lines 2 and 3 recites "..., the network computing system comprising a plurality of groups of network devices storing data, the ...". This line would be better recited as "..., the network computing system comprising a plurality of groups of network computing devices storing data, the ..." in order for the drawing element labels to be in agreement since the drawings are labeled "network computing devices". Line 6 has a similar problem. Lines 7 and 11 recite "management component" and the drawing element labels are "manager component" or "virtual manager component". "Management component is not in agreement with Applicants" drawing figure element labels. Claims 1-3, 11-13, 15, 20, 23, 25-27, 29, and 30 have a similar problem. Claim 4, page 3, line 6 is objected to because of the following informalities: Claim 4 recites "the first group of network devices". This line would be better recited as "the first group of network computing devices". Claims 1, 10, 16, 17, 20, 23, and 27 have a similar problem in the preamble and the body of the claims. Claims 7-9, 17, and 19 recite "first

network device" and "second network device". The drawing elements are labeled "network computing device". Other claim limitations reference "network computing device". These claims would be better recited as "first network computing device" and "second network computing device". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 4 recites the limitation "first manager component" in line 7, page 3. Claim 10 has a similar problem. Claim 20 recites the limitations "backup cells" and "plurality of network devices". Claim 27 has a similar problem. There is insufficient antecedent basis for this limitation in the claim. Correction is required. See MPEP § 608.01(b).

***Allowable Subject Matter***

7. Claims 4, 10, 20, and 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 1, 16, and 23 would be allowable if rewritten to overcome the claim objections as set forth in this Office action and to include the allowable subject matter of independent claim 1 reciting word for word "the plurality of backup cells configurable to be controlled by a manager component in another backup cell among the plurality of backup cells".

Claims 2, 3, 7-9, 11-13, 15, 17, 19, 21, 22, 25, 26, 29, and 30 would be allowable if rewritten to overcome the claim objections as set forth in this Office action.

As allowable subject matter has been indicated, applicants' reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

### **Inquiries**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Tuesday-Thursday, 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 27, 2006

  
ELLA COLBERT  
PRIMARY EXAMINER